

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DURAN IRVIN,)
Plaintiff,)
)
v.) C.A. No. 04-10033-REK
)
ANDREA CABRAL, et al.)
Defendants.)

MEMORANDUM AND ORDER

By Order dated January 21, 2004, plaintiff Duran Irvin was granted forty-two (42) days to either pay the \$150.00 filing fee or file an Application to Proceed Without Prepayment of Fees and Affidavit. See Docket No. 7.

On February 3, 2004 plaintiff filed an Application to Proceed Without Prepayment of Fees and Affidavit ("Application"). See Docket No. 11. Although plaintiff submitted a commissary slip, he did not attach a certified prison account statement to his Application.

Although plaintiff has submitted an Application as required under Section 1915(a)(1), he has not provided the required certified copy of his trust fund account statement at the Suffolk County Jail and House of Correction as required by Section 1915(a)(2). See 28 U.S.C. § 1915 (a)(1), (a)(2).¹

¹If plaintiff submits a certified copy of his prison account statement, the Court will direct the appropriate prison official to withhold from plaintiff's prison account and pay to the Court an initial payment towards the \$150.00 filing fee. The appropriate prison official will also be directed to collect monthly payments from plaintiff's prison

Moreover, although the Application indicates that plaintiff has no funds, the commissary slip lists a commissary fund balance of \$50.93. Therefore, the Court will deny plaintiff's Application without prejudice.

To enable this Court to calculate the amount that plaintiff must initially pay pursuant to Section 1915(b)(1), a copy of this Memorandum and Order will be sent by the Clerk to the Treasurer's Office at the Suffolk County Jail and House of Correction so that a copy of plaintiff's account statement may be promptly prepared and forwarded to:

Honorable Robert E. Keeton
United States Senior District Judge
United States District Court
District of Massachusetts
John Joseph Moakley Courthouse
1 Courthouse Way, Suite 2300
Boston, MA 02210

The Clerk will also send a copy of this Memorandum and Order to plaintiff along with a copy of the prescribed Application To Proceed Without Prepayment of Fees and Affidavit.

ORDER

ACCORDINGLY, plaintiff's Application to Proceed Without Prepayment of Fees (Docket No. 11) is denied without prejudice to

account on a continuing basis until such time as the \$150.00 statutory filing fee is paid in full. Id.

refiling with a copy of his certified prison account statement within forty-two (42) days of the date of this Memorandum and Order.

The Clerk is directed to send a copy of this order to the Treasurer's Office at the Suffolk County Jail and House of Correction so that a copy of plaintiff's account statement may be promptly prepared and forwarded to:

Honorable Robert E. Keeton
United States Senior District Judge
United States District Court
District of Massachusetts
John Joseph Moakley Courthouse
1 Courthouse Way, Suite 2300
Boston, MA 02210

SO ORDERED.

Dated at Boston, Massachusetts, this 6th day of April, 2004.

s/ Robert E. Keeton
ROBERT E. KEETON
UNITED STATES SENIOR DISTRICT JUDGE